

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Wednesday, January 19, 2022

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Gibbs, Vice Chairman Lickley, Representatives Moyle, Wood, Boyle, Vander Woude, Gestrin, Mendive, Kauffman, Blanksma, Addis, Moon, Manwaring, Okuniewicz, Yamamoto, Rubel, Mathias, Burns

**ABSENT/
EXCUSED:** Chairman Gibbs, Representative(s) Wood, Gestrin, Blanksma, Burns

GUESTS: The sign-in sheet will be retained in the committee secretary's office; following the end of the session the sign-in sheet will be filed with the minutes in the Legislative Library.

Chairman Lickley called the meeting to order at 1:30pm.

MOTION: **Rep. Mathias** made a motion to approve the minutes of the January 17, 2022 meeting. **Motion carried by voice vote.**

DOCKET NO. 15-0301-2100F: **Jennifer Okerlund**, Director, Idaho Forest Products Commission, stated this omnibus pending fee rule docket as written was before the committee during the 2021 Session. She indicated no changes were made from what the committee reviewed and approved last Session.

MOTION: **Rep. Manwaring** made a motion to approve **Docket No. 15-0301-2100F. Motion carried by voice vote.**

DOCKET NO. 37-0000-2100: **Mat Weaver**, Deputy Director, Idaho Department of Water Resources, stated this omnibus pending non-fee rule as written was before the committee during the 2021 Session. He indicated with one exception, there were no changes made from what the committee reviewed and approved last Session. He stated the rule chapter that did change from 2021 is **IDAPA 37-02.01**, Comprehensive State Water Plan Rules, which governs the designation of waterways as interim protected rivers and includes processes for adopting and amending the Comprehensive State Water Plan to make temporary interim protected river designations permanent.

Mr. Weaver explained, after a thorough review by Department staff and the Office of the Attorney General, they determined there was no current need to substantively amend or add to the rule, that some of the rule described outdated processes that were no longer needed, and three large portions of the rule were restating Idaho Code. As a result, the Water Resource Board chose to terminate the rulemaking associated with the Comprehensive State Water Plan Rule, and instead, eliminated those sections of the rule that were not needed resulting in an 80% reduction from over 3,200 words to 611 words.

MOTION: **Rep. Addis** made a motion to approve **Docket No. 37-0000-2100. Motion carried by voice vote.**

DOCKET NO. 37-0000-2100F: **Mat Weaver**, Deputy Director, Idaho Department of Water Resources, stated this omnibus pending fee rule docket as written was before the committee during the 2021 Session. He indicated no changes were made from what the committee reviewed and approved last Session.

MOTION: **Rep. Manwaring** made a motion to approve **Docket No. 37-0000-2100F. Motion carried by voice vote.**

**DOCKET NO.
37-0307-2101:**

Mat Weaver, Deputy Director, Idaho Department of Water Resources, stated this fee rule docket revises the Stream Alteration Rule, specifically Rule 61, which is a minimum standards rule that describes standards for small scale mining with suction dredges, powered sluices, or non-powered equipment. He explained mining operations meeting these minimum standards are not subject to more stringent procedural permit requirements described by law and mining operations meeting the Rule 61 minimum standards receive an expedited permit approval.

Mr. Weaver remarked the Department, in following **Director Spackman's** commitment to initiate negotiated rulemaking of Rule 61 in 2021, did host two public negotiation meetings and received at least three rounds of written comments. He remarked most that participated in the negotiated rulemaking supported keeping the minimum standards rule and the expedited permit process it authorizes.

In response to committee concerns regarding the National Oceanic and Atmospheric Administration's (NOAA) comments regarding mechanized equipment and stream bank protections, **Mr. Weaver** stated the issue is with characterizing the activity and the definition of mechanized. As a result, one of the substantive changes in the rule is to base regulation on whether a machine, or mechanized equipment, is powered or non-powered. He clarified, a machine is considered powered by any means other than by a human; for instance, gas powered and electric powered are machines. Once it was clarified how the Department would regulate the activity, NOAA's comments were pulled.

Jonathan Oppenheimer, Idaho Conservation League, spoke **in opposition to Docket No. 37-0307-2101**. He stated there is concern about the impact mining will have on sensitive fish habitat, in particular habitat that has been designated for threatened and endangered species such as steelhead salmon. The ICL participated in the negotiated rulemaking process and believes that with some of the changes made, there will be increased impacts to rivers and streams by allowing winches. He commented the rules are vague regarding winch operations because a winch offers mechanical power to increase human strength. As a result, ICL believes more work is needed clarifying the rules for mechanized and powered equipment.

MOTION:

Rep. Moon made a motion to approve **Docket No. 37-0307-2101**. **Motion carried by voice vote. Reps. Rubel and Mathias** requested to be recorded as voting **NAY**.

**DOCKET NO.
37-0101-2101:**

Peter Anderson, Hearing Officer Coordinator, Idaho Department of Water Resources, stated this docket is a new fee rule on rules of procedure of the Idaho Department of Water Resources and the Water Resource Board. He indicated no fee amounts were changed as a result of this new rule chapter. He explained the Department is required by statute to either adopt its own rules of procedure or use the generic Attorney General's rules, that is, the rules on how to make rules, as well as rules for contested cases. After consideration and input from the public, the Department determined an updated and targeted set of contested case rules specific to the Department's responsibility to administer water rights was necessary and moved forward with negotiated rulemaking.

MOTION:

Rep. Addis made a motion to approve **Docket No. 37-0101-2101**. **Motion carried by voice vote. Rep. Mathias** requested to be recorded as voting **NAY**.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:09pm.

Representative Lickley
Chair

Tracey McDonnell
Secretary